

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

1. DANNY BASHAM,

Plaintiff,

v.

1. ACTION GROUP STAFFING, a domestic
for profit business corporation, and

2. UNARCO INDUSTRIES, LLC, a foreign
limited liability company,

Defendants.

CASE NO. 15-CV-373-RAW

**(Wagoner County District Court
Case No. CJ-2015-0298)**

DEFENDANT ACTION GROUP STAFFING'S NOTICE OF REMOVAL

Defendant Action Group Staffing (hereinafter referred to as "Defendant" or "AGS")¹, by and through its undersigned counsel, and pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, hereby removes this matter from the District Court of Wagoner County, State of Oklahoma, to the United States District Court for the Eastern District of Oklahoma. In support of this Notice of Removal, Action states as follows:

1. On August 27, 2015, Plaintiff Danny Basham ("Plaintiff") filed a Petition in the District Court of Wagoner County, Case No. CJ-2015-298. A copy of the Petition is attached hereto as Exhibit 1.

2. Defendant AGS was served with the Summons and Petition on September 11, 2015. A copy of the Summons issued to AGS and Return of Service is attached hereto as Exhibit 2. Defendant Unarco Industries, LLC ("Unarco") was served with the Summons and

¹ AGS's correct party name is Drake Nelson, LLC d/b/a Action Group Staffing. AGS has filed a Notice of Party Name Correction [Dkt. #9] and requests that the Court enter an order directing all parties to use the correct party name on all future pleadings.

Petition on or about September 8, 2015. A copy of the Summons issued to Unarco and Return of Service is attached hereto as Exhibit 3. Thus, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed within thirty (30) days after Defendants were served with the Summons and Petition.

3. Defendant Unarco filed a Notice of Removal in this Court on September 28, 2015. See Dkt. #3.² On the same day, Defendant Unarco filed a Notice of Filing of Notice of Removal and a Motion to Dismiss in state court, copies of which are attached hereto as Exhibits 4 and 5.

4. No further process, pleadings or motions have been served and no further proceedings have taken place in this action. A copy of the state court docket sheet is attached hereto as Exhibit 6.

5. Venue is proper under 28 U.S.C. § 1441(a) for all federal claims because the District Court of Wagoner County, State of Oklahoma, is located within the United States District Court for the Eastern District of Oklahoma.

JURISDICTION OF THE FEDERAL COURT

6. Plaintiff's Petition is a civil action over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1331 in that Plaintiff's Petition contains claims for relief for employment discrimination based on Plaintiff's race under Title VII of the Civil Rights Act, as

² Defendant Unarco's Notice of Removal states that Unarco "is not removing" Plaintiff's cause of action for workers' compensation retaliation against Defendants to this Court. See Dkt. #3, at p. 2, ¶ 3. However, pursuant to 28 U.S.C. § 1441(c), if a civil action includes a claim arising under the Constitution, laws, or treaties of the United States and a claim that has been made non-removable by statute (such as a workers' compensation retaliation claim), "the entire action may be removed if the action would be removable without the inclusion of the nonremovable claim," and upon removal of such action "the district court shall sever and remand the severed claims to the State court from which the action was removed." Therefore, because 28 U.S.C. §1441 authorizes removal of an entire action, with subsequent remand by this Court of the nonremovable claim -- rather than partial removal of only the removable claims -- Defendant AGS has filed this separate Notice of Removal, rather than simply joining in Defendant AGS' removal. Based on Defendant Unarco's previous attempt to remove this action, Defendant AGS' understanding is that Defendant Unarco consents to this Notice of Removal as required by 28 U.S.C. § 1441(c)(2) and 1446(b)(2)(A).

amended, the Age Discrimination in Employment Act (ADEA) of 1967, as amended, 29 U.S.C. § 633(a), the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101, and 42 U.S.C. § 1981. *See* Petition at ¶¶ 32, 49, 55, 59 and 65. Plaintiff's Petition also alleges discrimination in violation of the Oklahoma Anti-Discrimination Act, retaliation in violation of the Oklahoma Workers' Compensation Act, 85 O.S. § 341, and negligent hiring, supervision and retention. *See* Petition at ¶¶ 32, 38 and 67. As a civil action founded on a claim or right arising under the laws of the United States, this action is removable to this Court pursuant to 28 U.S.C. § 1441(a).

7. As noted above, Plaintiff's Petition alleges retaliation in violation of the Oklahoma Workers' Compensation Act, 85 O.S. § 341, which claim is non-removable by statute pursuant to 28 U.S.C. § 1445(c). However, pursuant to 28 U.S.C. § 1441, because this action also includes a claim arising under the Constitution, laws or treaties of the United States, the entire action may be removed, and the workers' compensation retaliation claim must be severed and remanded to state court pursuant to 28 U.S.C. § 1441(c)(1) and (2). AGS respectfully defers to this Honorable Court in relation to remand and severing of this claim.

PROCEDURAL REQUIREMENTS

8. Written notice of the filing of this Notice of Removal will be provided to Plaintiff, together with a copy of the Notice of Removal and supporting papers. Pursuant to 28 U.S.C. § 1446(d), the same will be filed with the Clerk of the District Court of Wagoner County.

9. Pursuant to LCvR 81.2, AGS's Status Report on Removed Action shall be filed contemporaneously with this Notice of Removal.

10. AGS submits this Notice of Removal without waiving any defenses to the claims asserted by Plaintiff, without conceding that Plaintiff has pled claims upon which relief can be

granted, without admitting that Plaintiff has standing, and without admitting that Plaintiff is entitled to any monetary or equitable relief whatsoever.

11. This Notice of Removal does not waive any objections to defects in process or service of process, jurisdiction, venue, statute of limitations, exhaustion of administrative remedies, or any other defenses.

WHEREFORE, Defendant AGS, hereby gives notice that the matter styled *Danny Basham v. Action Group Staffing, et al.*, filed in the District Court of Wagoner County, Case No. CJ-2015-298, is removed to the United States District Court for the Eastern District of Oklahoma and AGS respectfully requests that this Court retain jurisdiction for all further proceedings as provided by law.

Respectfully submitted,

s/Steven A. Broussard

Steven A. Broussard, OBA #12582

Stephanie T. Gentry, OBA #18612

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**ATTORNEYS FOR DEFENDANT
DRAKE NELSON, LLC, D/B/A
ACTION GROUP STAFFING**

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2015, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of Notice of Electronic Filing to the Following ECF registrants:

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s/Steven A. Broussard

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